



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.04.2021

C O R A M

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THE HONOURABLE MR.JUSTICE P.D.AUDIKEVALU

W.P. (MD)No.4840 of 2013

G.Pakianathan

... Petitioner

Vs.

- 1.The Commissioner,
Adi Dravidar Welfare Department,
Chennai - 600 005.
- 2.The District Adi Dravidar Welfare Officer,
Adi Dravidar Welfare Department,
Kanyakumari District,
Nagercoil.
- 3.The Head Master,
Government Tribal Residential Hr. Sec. School,
Pathukani,
Kanyakumari District.
- 4.The Assistant Director,
Internal Audit,
Internal Audit and Statutory Boards Audit Department,
Tamil Mani Commercial Complex,
2nd Floor,
28/1-149, Cap Road, Kottar,
Nagercoil - 629 001.
- 5.The Accountant General (A & E),
No.361, Anna Salai,
Chennai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the constitution of India, to issue a Writ of Certiorarified Mandamus by calling for the entire records pertaining to the order passed by the fourth respondent vide his proceedings in Na.Ka.No.56/A3/09, dated 25.01.2010 which has been subsequently affirmed by him vide his communication made in Na.Ka.No.949/A2/2012, dated 16.11.2012 and quash the same and consequently direct the third respondent to disburse withheld amount (Rs.52,639/-) along with its interest and further direct him to send a revised pension proposal to the fifth



respondent for getting the enhanced pension based on the fixation of Selection Grade and Special Grade made in the petitioner's service.

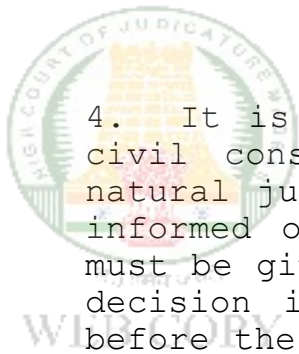
For Petitioner	:	Mr.R.Anand
For Respondents	:	Mr.M.Jayakumar
1 to 4		Additional Government Pleader
For Respondent 5	:	Mr.P.Gunasekaran
		Standing Counsel

ORDER

Heard Mr.R.Anand, Learned Counsel for the Petitioner, Mr.M.Jayakumar, Learned Additional Government Pleader for the First to Fourth Respondent and Mr.P.Gunasekaran, Learned Standing Counsel for the Fifth Respondent and perused the materials placed on record apart from the pleadings of the parties.

2. It is the common case of the parties that the Petitioner had been appointed temporarily as P.G. Assistant on 08.11.1979 in the schools run by the Adi Dravidar Welfare Department of the Government of Tamil Nadu and had been terminated on 30.04.1980 for want of vacancy. He was regularly appointed to the said post on 02.06.1980 and he retired from service on attaining the age of superannuation on 31.07.2009. At that stage, the Third Respondent acting on the instructions of the Fourth Respondent in the Order Na.Ka.No.56/A8/09, dated 25.01.2010 withheld a sum of Rs.52,639/- from the Death-cum-Retirement Gratuity (DCRG) of the Petitioner, who objected to the same by a legal notice dated 23.10.2012 through his Advocate. The Fourth Respondent by a reply dated 16.11.2012 informed that the aforesaid amount had been withheld as it was an excess payment made by erroneously extending the benefit of Selection Grade pay to the Petitioner with effect from 08.11.1979 instead of 02.06.1980 when he was actually regularised in service. Aggrieved thereby, the Petitioner has filed this Writ Petition assailing the Order in Na.Ka.No.56/A3/09, dated 25.01.2010 and the Order in Na.Ka.No.949/A2/2012 dated 16.11.2012 received from the Fourth Respondent. It is also the contention of the Petitioner that his pension has to be fixed taking into account his temporary service from 08.11.1979 onwards and that the Third Respondent would have to send revised proposal for enhancement in that regard, apart from disbursing the unlawfully withheld amount of Rs.52,639/- from his DCRG due to him with interest.

3. The Fourth Respondent, who has filed counter affidavit on behalf of the Respondents, justifies the impugned withholding of the said amount from the DCRG of the Petitioner as an excess payment made by erroneously taking into account the period of service of the Petitioner from 08.11.1979 instead of 02.06.1980 when he was actually regularised.



4. It is trite law that any administrative action which involves civil consequences must be made consistently with the rules of natural justice, meaning thereby that the person concerned must be informed of the case with supporting evidence against him and he must be given a fair opportunity to meet the case before an adverse decision is taken. It is not the case of the Respondents that before the impugned recovery towards excess payment claimed to have been made was effected, any show cause notice had been issued to the Petitioner calling for an explanation from him with supporting materials relied in that regard. Such incurable flaw in decision making by the Respondents which is in violation of the principles of natural justice vitiates the impugned orders which have to be set aside on that sole ground leaving it open to the concerned authorities to appropriately deal with the matter following due process. The Government of Tamil Nadu in G.O.Ms.No.286, Finance (Pension) Department, dated 28.08.2018, after referring to the principles laid down by the Hon'ble Supreme Court of India in **State of Punjab -vs- Rafiq Masih (Whitewasher)** [(2015) 4 SCC 334], has issued detailed instructions providing the manner in which excess amount made to Government Servants/Pensioners/Family Pensioners have to be made.

5. Insofar as the claim of the Petitioner for enhancing his pension taking into account his temporary service from 08.11.1979 onwards also is concerned, it requires to be noticed here that the Full Bench of this Court in the decision in **Government of Tamil Nadu and Others -vs- R.Kaliyamoorthy** [2019 (6) CTC 705] considered the following question of law :-

"Whether half of the past service rendered by Government servants whose appointments were regularised after 01.04.2003 can be counted for the purpose of grant of pension under the provisions of the Tamil Nadu Pension Rules, 1978 in the light of the amendments to the aforesaid rules vide G.O. Ms. No.259, Finance (Pension) Department dated 06.08.2003 and G.O. Ms. No.41, Finance (Pension) Department dated 08.02.2010."

It has been held in that authoritative pronouncement as follows:-

(i) Those who are freshly appointed on or after 01.04.2003 are not entitled to pension in view of proviso to Rule 2 of Tamil Nadu Pension Rules, 1978 inserted by G.O.Ms.No.259 dated 06.08.2003.

(ii) Those government servants/employees appointed prior to 01.04.2003 whether on temporary or permanent basis in terms of Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules will be entitled to get pension as per the Tamil Nadu Pension Rules, 1978.

(iii) In case, a government employee/servant had also



rendered service in non-provincialised service, or on consolidated pay or on honorarium or daily wage basis and if such services were regularised before 01.04.2003, half of such service rendered shall be counted for the purpose of conferment of pensionary benefits.

(iv) Those government servants who were appointed in the aforesaid four categories before the cut off date and later appointed under Rule 10 (a) (i) of Tamil Nadu State and Subordinate Service Rules before 01.04.2003 and absorbed into regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension.

(v) Those government servants who were appointed in the aforesaid four categories before 01.04.2003 but were absorbed in regular service after 01.04.2003 will not be entitled to count half of their past service for the purpose of determination of qualifying service for pension."

Viewed from that perspective, it is incumbent upon the concerned authorities to examine the claim of the Petitioner for enhancement of his pension taking into account his temporary service from 08.11.1979 onwards before he was regularised in service on 02.06.1980 and depending upon its outcome, necessary further action would have to be taken in that regard.

6. The result of the foregoing discussions is that the following order is passed :-

(i) The impugned orders in Na.Ka.No.56/A3/09, dated 25.01.2010 and Na.Ka.No.949/A2/2012, dated 16.11.2012 issued by the Fourth Respondent are quashed.

(ii) The concerned authorities shall issue show-cause notice to the Petitioner along with working-sheet of the calculation for the excess payment claimed to have been made to him in his pay and after affording full opportunity of personal hearing to him and considering each of the objections that may be raised by him, a reasoned order shall be passed on merits and in accordance with law following the procedure laid down in the instructions in G.O.Ms.No.286, Finance (Pension) Department, dated 28.08.2018 issued by the Government of Tamil Nadu, uninhibited and uninfluenced by any of the earlier orders passed in the matter, and the decision taken shall be communicated to the Petitioner under written acknowledgement.

(iii) In continuation of the legal notice dated 23.10.2012 sent by the Petitioner through his Advocate, the Petitioner is permitted to make representation by



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claim for enhancement of pension taking into account his temporary service from 08.11.1979 onwards till he was regularised on 02.06.1980 viz-a-viz the dictum laid down by the Full Bench of this Court in ***Government of Tamil Nadu and Others -vs- R.Kaliyamoorthy*** [2019 (6) CTC 705], and after affording opportunity of personal hearing, the First Respondent shall pass reasoned orders on merits and in accordance with law and communicate the decision taken to the Petitioner under written acknowledgement.

- (iv) In the event of concerned authorities arriving at the conclusion that the excess amount of pay in Selection Grade has arisen out of an incorrect calculation and the resultant amount or Rs.56,639/- deducted from his DCRG cannot be sustained or that the pension amount had been erroneously paid at reduced rate, such differential amounts due to the Petitioner shall be paid to him with interest at the rate prescribed under the relevant rules and if no such rate of interest is prescribed, at the rate of 7.5% per annum from the revision on which those amounts had fallen due, till payment.
- (v) The aforesaid exercise shall be completed expeditiously and a report of the compliance in that regard shall be filed before the Registrar (Judicial) of this Court by 31.08.2021.
- (vi) If the pension of the Petitioner for future months is revised, it shall be paid at the enhanced rate to him on the due dates.
- (vii) The parties shall bear their respective costs.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



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No.361, Anna Salai, Chennai.

6.The Registrar(Judicial)
Madurai Bench Of Madras High Court,
Madurai.

+1 CC to M/s.SPL GP (SR-16317[F] dated 17/04/2021)

W.P. (MD)No.4840 of 2013
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GS (18.05.2021) 6P 8C